THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION No.2025 of 2005

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Dated 20th December 2005

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Between:

Kasinath Rao Godse, son of Gangadhar,

Occ: Retired employee, resident of

H.No.3-4-1013/26, Barkatpura, Hyderabad.

…. Petitioner.

And

1. The Municipal Council, Sanga Reddy,

represented by its Commissioner,

Sanga Reddy, Medak District and 2 others.

…. Respondents.

* * *

ORDER:

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This writ petition has been filed by Kasinath Rao Godse with a prayer to issue a writ, order or direction, more particularly one in nature of writ of Mandamus declaring the action of the respondents in not paying compensation for the excess open space in possession of the municipality or releasing the excess open land of Ac.0-336 guntas = 1624.24 square yards in survey Nos.283, 284 and 287 of Kalvakunta, Sangareddy, Medak District, as illegal, arbitrary and

violative of Articles 14, 16 and 300-A of Constitution of India. A further direction has been sought for to the respondents to pay compensation of Rs.9,82,520/- for the excess open space in possession of the Municipal Council, Sanga Reddy-first respondent.

2. Petitioner is owner of land admeasuring Ac.5-65 cents comprising survey Nos.283, 284 and 287 of Kalvakunta, Sanga Reddy, Medak District. He converted the agricultural land into house plots and got the layout approved. The layout plan No.137/1989 came to be sanctioned by the Director of Town and Country Planning, Hyderabad-third respondent. After releasing the layout, the petitioner submitted representation to the Municipal Commissioner-first respondent claiming compensation for the areas left over and above the minimum areas required as per Rule 10 (1) of A.P. Municipalities (Layout) Rules, 1970. His representation came to be forwarded to the Director of Town and Country Planning, Hyderabad-third respondent, for necessary instructions. The letter No.ROC.TPS/35/87-88 dated 10.04.2003 addressed to the Director of Town and Country Planning by the Commissioner, Municipal Council, Sanga Reddy reads as follows:

> " With reference to the subject cited, I submit that the layout owner Sri Kashinath Rao Godse, has stated that the excess open space has been provided in layout No.137/89 in survey Nos.283, 284 and 287 situated at Kalvakunta, Sangareddy and requested for release of excess open space or for payment of compensation. The details of open space as per layout is as follows:

1) Open for park & High School provided 1-04 A.C.

2) Land reserved for public purpose i.e.,

10% 0.565 A.C.

3) Gross excess open space 0.48 A.C.

4) Net excess open space 0.336 A.C.

5) Roads area 29.10% 1.64 A.C.

6) Total layout area 5.65 A.C.

The excess open space is shown as park and high

school in Master Plan.

> In view of the above, I request you to issue necessary instructions regarding release of excess open space measuring of 0.336 A.C."

The Director of Town and Country Planning, Hyderabad, in turn called for certain clarifications from the Commissioner, Sanga Reddy Municipality-third respondent. The Commissioner, Municipal Council, Sanga Reddy addressed a letter dated 05.05.2004 giving certain clarifications on the queries raised by the Director of Town and Country Planning, Government of Andhra Pradesh, Hyderabad. The letter No.TPS/35/87 dated 05.05.2004 addressed to the Director of Town and Country Planning reads as follows:

> " I invite your kind attention to the reference cited, I submit herewith the required information as follows:
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> 1) Regarding providing roads, drains, water supply it is to submit that the landowner has provided roads in the above layout, but not provided drains and water supply. On his representation the matter was placed before the Municipal Council and the Municipal council in its resolution No.19 dated 18.08.1992 has resolved to release the layout duly collecting betterment charges individually from the plot owners to from the roads, drains and water supply etc., subsequently the Municipality also collected betterment charges from the plot owner. Regarding handing over the roads and open spaces to the Municipality it is submit that the land owner Sri Kashinath Rao has handed over roads & open space to the Municipality on Rs.100/- stamped paper while mentioning a condition that the Municipality has

to pay compensation to the excess open space to an extent of 0.0336 Ac. of land.

2) The landowner has sold out the plots to the others.

3) The Municipality has issued building permissions in

the above layout to the plot owner duly collecting

the betterment charges etc.,"

Thereafter, the Director of Town and Country Planning, directed the Municipal Commissioner, Sanga Reddy Municipality to assess total cost of formation of roads, drains, culverts, street lights, water supply etc., in the layout area and issue a notice to the petitioner to pay the amount to the municipality so as to consider the request of the applicant for payment of compensation for the excess open space as sought for. Assailing the action of the respondents in not paying the compensation for the excess areas left out in the layout, the petitioner has chosen to approach this Court by invoking the jurisdiction of Article 226 of Constitution of India.

3. Respondents filed counter-affidavit. It is stated in the counter-affidavit of the first respondent that the area as left out for park purpose is the area which is earmarked for park as per the Master Plan. It is further stated that since an area of 1-04 guntas of land is coming under park and high school per the Master Plan, the same is left out for the said purpose. It is suffice to refer paras 5 and 6 of the counter-affidavit, which read thus:

5. " It is respectfully submitted that in reply to para 4 of the affidavit, I submit that the writ petitioner mortgaged the plot Nos.53, 54, 55, 64, 65 and 66 towards security deposit at the time of submitting layout proposals. The Municipal Council is not aware whether the writ petitioners sold all the plots. However, only few individuals applied for building permission by paying individual betterment charges. Still many plot owners have to pay betterment charges. It is incorrect to say that the entire area is handed over to the municipal council. Through

the letter appended to the gift deed writ petitioner categorically mentioned he is handing over only 10% area requesting to pay compensation for excess area i.e., Ac.0.336. The area left for schools is to be excluded while calculating the open space. The area left for the school is left for the construction of school building only.

6. It is respectfully submitted that in reply to para 5 of the affidavit, I submit that it is a fact that the mortgaged plots were released in favour of writ petitioners. The net excess open place claimed by the writ petitioner is Ac.0.336 equivalent to 1624.24 square yards. It is incorrect to say that entire area Ac.1.04 is left as open space. Out of Ac.1.04, some area is left out for construction of school building. So it cannot be said that entire area is left out for open space. The open space left out is not more than 10%. Whatever excess area is found is left out for high school purpose. In the Master Plan, to provide general amenities some area is earmarked as commercial and some area is residential some area for schools. This division is for general public purpose for which the land can be utilized. Only park area is compulsorily is to be left open for park purpose for general public use and all park places is to be transferred in favour of municipality along with roads in the layout. So it is incorrect to say that the writ petitioner left 18% open space. Hence, the question of payment of compensation does not arise."

4. V.R.Satish Chandra has sworn the counter-affidavit filed on behalf of third respondent. It is stated in the counter affidavit that a layout plan was approved by the Director of Town and Country Planning vide Lr.D.Dis.No.3326/88/D5, dated 10.11.89 along with the layout conditions annexured to the letter. As per the said conditions, the owner has to hand over the roads and open spaces provided in the approved layout to the municipality through a registered gift deed. But the petitioner has not provided amenities like drainage, water supply, electricity etc., in the layout area as required under Section 184 of A.P. Municipalities Act 1965, and Layout Rules made thereunder issued in G.O.Ms.No.62 MA, dated 28.01.1970, nor deposited equal estimated amount with the municipality to provide the civic amenities. In contrary, he sold out the plots without fulfilling the layout conditions imposed in this office letter D.Dis.No.3326/88/D5, dated 10.11.1989 annexured. Since the petitioner has not paid betterment charges, the Municipal Council in its resolution No.19, dated 10.8.1992 resolved to release the layout duly collecting the betterment charges

from the individual plot owners. As per Rule 10(2) of Layout Rules issued in G.O.Ms.No.62 MA, dated 28.01.1970 if a part of the layout land falls in the area earmarked for public and semi public use in the Sanctioned General Town Planning Scheme, in the interest of general development of the locality, the owner of such land shall transfer such percentage of the area of layout as prescribed in sub-Rule (1) of Rule 10 of Layout Rules, free of cost to the municipality. In other case i.e., if the area so earmarked in the layout under reference is more than such percentage as prescribed in sub-Rule (1) of Rule 10, he shall also transfer the entire area to be resumed in the layout and he is entitled to receive compensation at the prevailing market rate from the municipality for excess extent of land provided under sub-Rule (1) of rule 10 of Layout Rules. But, at the same time under Sections 184, 185 and 186 of A.P. Municipalities Act, 1965 it is the owners obligation to provide the roads and other civic amenities in the layout area and the layout roads made thereunder. But the petitioner has sold out the plots without fulfilling the conditions imposed by the respondent No.3 in Lr.D.Dis.No.3326/88/D5, dated 10.11.1989. As such, the third respondent has requested the executive authority i.e., first respondent in his office Lr.No.6820/03/H2, dated 11.8.2004 to estimate the total cost for formation of roads, drains, culverts, streetlights, water supply etc., and issue a notice to the layout owner to pay the amount to the municipality so as to consider the request of the petitioner for payment of compensation for the excess land, if any.

5. The petitioner has filed reply affidavits to the counter-affidavits of respondents 1 and 3.

6. Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for first respondent and the learned Government Pleader for Municipal Administration and Urban Development appearing for respondents 2 and 3.

7. Learned counsel for the petitioner submits that the petitioner left out the areas more than what is prescribed in Rule 10 and therefore, the petitioner is entitled to claim compensation for the excess areas left out for common amenities. Much emphasis has been made under Rule 10 of the Layout Rules, 1970. For better appreciation I may refer Rule 10 (1) and (2) which reads thus:

> " 10(1): The area of land required to be set apart under Clause (b) of sub-section (2) of Section 184 shall not be less than 5% of the gross area covered by the layout with not more than 8 plots per gross Hectare over and above this for the increase of every two plots per gross hectare, the open spaces to be provided shall increase by one more per cent. (Such open space shall, however, be limited to 10% a maximum, irrespective of the size of plots when minimum, extent and width safety as per sub-rule (1) of Rule9.)
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> (2) In case the area, for which a layout is sought for, falls in a Master Plan or in a Town Planning Scheme and for which a draft scheme is already furnished by the Director of Town Planning or in a Sanctioned Town Planning Scheme or Master Plan, if a portion of his land falls in the area earmarked in such plan for a common public purpose in the interest of general development of that locality, the owner of such land shall transfer such percentage of the area of layout as prescribed in sub-rule (1) free of cost to the Municipality. In other cases i.e., if the area so earmarked in the layout under reference are more than such percentage as prescribed in sub-rule (1), he shall also transfer the entire area so proposed to be reserved in the layout and he is entitled to receive compensation at the prevailing market rates from the Municipality for the part of his site which is in excess of the extent of land which he has to provide as per sub-rule (1)."

Learned counsel took me to the representations submitted by the petitioner claiming compensation for land of 1624 square yards. Copies of the representations dated 25.03.1994 and 17.05.1994 have been placed on record.

8. Learned Standing Counsel appearing for the first respondent submits that the petitioner converted the agricultural land into house plots without complying the

conditions. He further submits that the petitioner in derogation of the terms and conditions subject to which layout has been granted sold the plots and ultimately betterment charges came to be collected from the individual owners of the plots. He refers to the letter dated 17.05.1994 addressed by the petitioner to the first respondent-Municipal Council. In the letter the petitioner has admitted of his not paying betterment charges and selling the plots. For better appreciation I may refer to relevant portion of the letter dated 17.05.1994 and it is thus:

> " I have mortgaged the plots towards security deposit (plots 53, 54, 55, 64, 65 and 66) at the time of submitting my layout proposals. I have made several requests to release my mortgaged plots. But after gap of about 4 years you have sanctioned my layout subject to conditions laid down in annexure and informed me to complete the works within three months. But I have already sold out the plots long back to different individuals. I have not collected the development charges from any of the purchasers. The municipality has not informed me to take up the development work at the time of initial stage. I have already formed the roads and drainage work long back. As per the directions of the then Commissioner (Smt.P.Anuradha) I have handed over the roads and open space to the municipality by gift deed. Now, the question of development, roads etc., does not arise. Moreover the municipality has also given permission in the said layout collecting the development charges from the concerned individuals."

9. It is explicit from the above referred letter that the petitioner sold the plots without paying development charges to the municipality. Ultimately, development charges came to be collected from the individual purchasers. The petitioner having himself not complied the conditions subject to which layout has been released resorted to making demand for compensation for excess area. In the circumstances, the Director of Town and Country Planning-third respondent is justified in addressing letter dated 11.08.2004 directing the Municipal Commissioner to assess the total cost for formation of roads, drains, culverts, street lights, water supply etc., Unless the petitioner complies with the conditions stipulated in the layout, he cannot claim any compensation for excess area, even if there is any. Therefore, this is not a fit case to grant any

relief to the writ petitioner.

10. The writ petition is, accordingly, dismissed. No costs.

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B.SESHASAYANA REDDY, J.

Date: 20th December 2005.

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